was rightly convicted. The essence of the offence of criminal breach of trust is the 'dishonest' misappro priation or conversion by a person of property entrusted to him. The fact that in this case the entrusting of the property was gratuitous is, in our view, immaterial; the point is, did the accused dishonestly convert to his own use the property of which he was the bailee? The evidence accepted by the Magistrate proved beyond all doubt that he did, and we fail to see, therefore, that the complainant's only remedy is a civil action.

I think it is only necessary to refer to one authority in support of this proposition viz: *Regubir Kurmi,*[3] in which it was held that:—

> "Where the accused asked for a gold mohur from the complainant in order that he might play with a child that was weeping, using the mohur as a play thing, and subsequently misappropriated it, he was guilty of criminal breach of trust".

For the above reasons we dismissed the appeal.

Appeal dismissed.

[REVISIONAL CIVIL JURISDICTION]

CUSSEN, J.

November 6, 1940.

HALIMAH binti LATIFF

(Plaintiff)

v.

HAJI MOHAMED DIN bin HAJI ABDULLAH

(Defendant).

[COURT OF A JUDGE—REFERENCE BY MAGISTRATE]

[SELANGOR CIVIL APPLICATION No. 27 of 1939]

Land Code (Cap. 138) sections 42 (iii), 95—Indefeasibility of Title—Memorandum of Transfer signed by another in the name of Transferee—Transferee a minor—No question of fraud—Infringement of section 95 Land Code—Meaning of "void" in section 42 (iii) Land Code.

In 1936 the proprietor of E.M.R. 6054 Ulu Langat executed a memorandum of transfer in favour of plaintiff (then a minor) and defendant, as co-proprietors. The memorandum was executed in plaintiff's name by another person.

Defendant drew the coupons for the land (which was planted with rubber) and refused to give plaintiff her share. Plaintiff (now of age) sued defendant for damages for conversion of her share of the coupons. At the hearing it was contested for defendant that by section 42 of the Land Code the registration of plaintiff as co-proprietor was void and therefore plaintiff was not the proprietor of the land.

Held, that the plaintiff, being the person entered on the Register was "for the time being" the proprietor of the land.

REFERENCE UNDER SECTION 571 OF THE CIVIL PROCEDURE CODE.

Plaintiff in person.

G. W. de Silva for Defendant.

M. C. Hay, Deputy Commissioner of Lands, as *amicus curiae.*

Cussen, J.—This is a reference on a question of Law under Section 571 of the Civil Procedure Code from the Magistrate, Ulu Langat.

The question and the relevant facts are as follows:—

The Plaintiff (Halimah binti Latiff) and the Defendant (Haji Mohd. Din bin Haji Abdullah) are registered as the proprietors of the land in E.M.R. 6054, Mukim Ulu Langat. They came on the Register on 9th October, 1936 by a transfer from the then Registered Proprietor one Haji Isa.

At that date Halimah was a minor (she is now of age) and the Memorandum of Transfer was signed as Transferee not by Halimah but by her mother Bedah who signed as Halimah.

There was no question of any dishonesty or fraud; but the provisions of the Land Code were infringed—which forbids land to be registered in the name of a minor. The proper course would have been for Bedah to have taken the transfer to herself as "Trustee."

Bedah also, apart from the matter of the minority of Halimah, had no authority (no Power of Attorney) to sign for Halimah.

It is evident therefore that the Memorandum of Transfer was at any rate an insufficient if not a void instrument within the meaning of Section 42 (iii) of the Land Code which is as follows:—

> "42. (iii). If the registration of any proprietor, chargee or lessee has been obtained by forgery or by means of an insufficient or void instrument such registration shall be void."

The question for decision then is: In view of the provisions of Section 42 (iii) is Halimah a Proprietor (i.e. co-proprietor) of this land?

"Proprietor" is defined in Section 2 of the Land Code as "the individual person . . . . *for the time being* registered as the owner of land comprised in a . . . . entry in the Mukin Register."

This must depend upon the construction of Section 42 (iii) and the meaning and force to be given to the word "void" therein.

I have heard the Parties to this Civil Suit (Mr. De Silva for the Defendant) and I have had the assistance of the Deputy Legal Adviser (Lands) (Mr. Hay) as *amicus curiae.*

Mr. Hay stressed the force of the words "for the time being" in the definition of "proprietor" and argued that in Section 42 (iii) the word "void" should be taken to mean "voidable"—at the instance of an injured party which would include the Proper Registering Authority who could take action to have the memorial on the Register cancelled.

To so construe Section 42 (iii)—thus making the person whose name is actually on the Register the "Proprietor" as long as the memorial remains—could not injuriously affect any person, while the contrary construction would lead to much inconvenience.

On a strict construction of Section 42 (iii) one would never know at any given moment who really was the Proprietor. It would also be contrary to the definition of "Proprietor."

Again the "Proprietor" is the person liable to carry out the obligations of the title—to pay the rent, observe conditions and such like.

If, in a case like the present one, the person, being a real person, whose name is on the Register, is not to be treated as the Proprietor, who is to be so treated? Is it the Transferor who, in executing the Transfer, acted honestly and *bona fide?* It might be a great hardship to so regard him.

I come then to the view that in a case such as this the person entered on the Register i.e. the Plaintiff Halimah, is "for the time being" the Proprietor of the land.

I find support for this view in *Hogg's* Treatise entitled "Registration of Title to Land throughout the Empire."

At page 145 the learned Author writes in his Section dealing with "Forged and Invalid instruments" as follows:—

> "In the South Australian Enactment the registered 'certificate or instrument of title' is said to be 'void.' But in the Privy Council Judgment (**Gibbs v. Messer** (1891) A.C. 248) though the 'forged transfer or mortgage' is referred to as 'void' or 'a null deed,' it is said to be capable of becoming 'the root of a valid title in a **bona fide** purchaser' and the 'registered right of the transferee or mortgagee' is not treated as void but only as not 'indefeasible.' This suggests that the registration of the person taking under the forged instrument is better described as 'voidable,' the register being inconclusive for the time being. It would seem that only in such circumstances as occurred in **'Gibbs v. Messer'** where a merely fictitious name was placed on the register could the registration, that is the register entry and the certificate of title, be properly described as void and incapable of becoming 'the root of a valid title.'"

Order accordingly.

JOHORE REPORT.

[APPELLATE CIVIL JURISDICTION]

TERRELL, Ag. C.J., POYSER, C.J. F.M.S. & GORDON-SMITH, Ag. J.A.

October 5, 1940.

WEE BONG NEO (f), the Administratrix of LIANG ENG TOON, deceased

(Appellant—Respondent)

and

TAN JEE TEE

(Respondent—Applicant).

[CIVIL APPEAL No. 3 of 1940]

[J.B. ORIGINATING SUMMONS No. 32 of 1939]

Practice—receiver by way of equitable execution—application must be made in proceeding in which judgment obtained—when relief available—Procedure to set aside irregular appointment—F.M.S. Civil Procedure Code, Sections 298 and 299 not applicable—Jurisdiction under Section 597.

On the **ex parte** application of a judgment creditor an order had been made appointing his attorney receiver by way of equitable execution of the debtor's interest in certain immovable property. At the time of the application the debtor was dead. The application was made by Originating Summons in which the deceased debtor had been made the respondent. On a subsequent motion by the administratrix of the deceased debtor's estate asking to be substituted as respondent and for the earlier order to be set aside.

Held, that the application for the appointment of the Receiver should have been made in the cause or matter in which the judgment had been obtained, but that the procedure by way of motion to set aside the appointment was wrong and that application should have been made under Section 298 of the Civil Procedure Code. On appeal to the Court of Appeal.

Held, that since the order appointing the Receiver was made without jurisdiction and execution by such method clearly illegal, the appellant was entitled to have the order set aside **ex debito justitiae** by virtue of section 597 of the Civil Procedure Code.

Wai Seng Leng v. Chait Singh,(1) distinguished.

Case referred to:

(1) *Wai Seng Leng v. Chait Singh,* 8 M.L.J. 316.

ON MOTION before the Judge.

McIntyre for judgment Creditor.

S. G. Pillay for deceased debtor's administratrix.

Laville, Ag.J.—In this Originating Summons a judgment creditor Tan Jee Tee of the deceased Leong Eng Toon applied through his attorney Tan Kah Eur that the said attorney should be appointed receiver by way of equitable execution under section 275A of the Civil Procedure Code of the property of Leong Eng Toon for the purpose of realising the amount of the debt.